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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7548 OF 2005

Purushottam Vasant Bhagwat ... Petitioner

V/s

Bank of Baroda,
Deolali Branch, Nashik. ... Respondent

Mr. Vishal Kale for the petitioner.

Mr. Loncy D'Souza with Mr. V.M. Parkar for the respondent.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 18TH JULY, 2007.

P.C.:

1. The petition has been filed challenging the dismissal of the Misc. Application (IT) No. 11 of 2001. This order was passed on 5.7.2005.

2. A miscellaneous application was filed for condoning the delay in filing the miscellaneous application for restoring the Reference (IT) No. 4 of 1998. That reference had resulted in an order dated 11.6.2001. The reference was dismissed for want of prosecution since the petitioner did not attend the proceedings for a long period of time. After the determination of the

reference by the Industrial Court, an application for restoration was filed, being Misc. Application No. 11 of 2001. The respondents therein opposed the application for condoning the delay contending that the Tribunal had become *functus officio* and that in view of the judgments of the Supreme Court in the case of **Sangham Tape Company v/s Hans Raj, reported in 2004 DGLS 662 and Grindlays Bank Ltd. v/s Central Govt. Industrial Tribunal & ors., reported in 1980 SCC 420,** the Tribunal could not consider the application for restoration. The Tribunal was impressed with the submissions made on behalf of the respondent Bank. The Industrial Tribunal held that in view of the aforesaid judgments, it had become *functus officio* because the order dated 11.6.2001 was published on 26.7.2001, whereas the restoration application was filed on 12.10.2001.

3. The learned advocate appearing for the petitioner submits that the order dated 11.6.2001 is not an award as defined under Section 2(b) of the Industrial Disputes Act as there is no final determination of the dispute between the parties. He submits that the dismissal of the reference for non-prosecution would mean that the Tribunal had not applied its mind to the dispute which was pending and had not adjudicated or determined the

dispute. According to the learned advocate, if the order dated 11.6.2001 dismissing the reference for non-prosecution is not an award, then merely because that order has been published under Section 17A of the Industrial Disputes Act, the Tribunal would not become *functus officio.* The learned advocate relies on the judgment of the Supreme Court in the case of **Cox and Kings Ltd. v/s Their workmen, reported in A.I.R. 1977 SC 1666** in support of his submissions. He, therefore, urges that the application for restoration be allowed and the reference be heard on merits.

4. The learned advocate for the respondent Bank submits that the petitioner had not bothered to lead evidence before the Tribunal which gave rise to a situation where the Tribunal had determined the dispute on the basis of no evidence. The Tribunal had concluded that the reference was required to be dismissed because there was no evidence available to support the petitioner’s case. According to the learned advocate, the order dated 11.6.2001 is an award as defined under Section 2(b) of the Industrial Disputes Act. That award was published on 26.7.2001. The restoration application was filed only on 12.10.2001 by which time the Industrial Tribunal had become *functus officio.* The learned advocate, therefore, urges that the petition be rejected.

5. The proposition laid down by the Supreme Court *in* the case of **Grindlays Bank** (supra) and **Sangham Tapes** (supra) is that when an ex-parte award is passed and an application is to be filed for setting it aside, that application must be preferred within 30 days of the publication of the award. Any application made thereafter cannot be considered by the Tribunal because it becomes *functus officio.*

6. In the present case, the question is whether the order passed by the Tribunal on 11.6.2001 dismissing the reference for want of prosecution is an award as defined under Section 2(b) of the Industrial Disputes Act. Section 2(b) reads as follows:-

> "**Sec.2(b):** "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under section 10A."

In the present case, there is no interim or final determination of the industrial dispute by the Tribunal. The order dated 11.6.2001 is not a final determination

of the industrial dispute but only a dismissal of the reference for non-prosecution. The Tribunal has dismissed the reference since no one appeared for the petitioner for a long period of time. The matter was adjourned for oral evidence from time to time but the petitioner and the advocate failed to remain present. On 11.6.2001, the matter was called out repeatedly, at 11.00 am. and 4.30 pm. Neither the workman nor his representative remained present. It was for these reasons the Tribunal accepted the contentions of the representative of the respondents who insisted that the reference be dismissed for want of prosecution.

7. Therefore, in my view, there is no interim or final determination of the dispute between the parties, but it was only on account of the absence of the workman that the reference was dismissed.

8. In the case of **Cox and Kings Ltd.**, the Supreme Court has held thus,

> "The definition of award in S.2(b) falls in two parts. the first part covers a determination, final or interim, of any industrial dispute. The second part takes in a determination of any question relating to an industrial dispute.

> But the basic postulate common to both the parts of the definition, is the existence of an industrial dispute, actual or apprehended. The "determination" contemplated by the definition is the industrial dispute or a question relating thereto, on merits. It is to be noted further that S.2, itself, expressly makes the definition subject to "anything repugnant in the subject or context".

The Supreme Court held that the order passed by the Labour Court dismissing the preliminary objections is not a final determination of the reference. In these circumstances, the judgment of the Supreme Court fortifies the view which I have taken.

9. The order of the Industrial Tribunal dated 5.7.2005 is set aside. The petitioner is at liberty to lead such evidence as required to establish that he had sufficient reason for not remaining present on 11.6.2001. The respondent Bank may lead evidence in rebuttal, if it so desires. The Industrial Tribunal shall determine whether the petitioner has made out a case for restoring the reference. The Tribunal will pass orders on Misc. Application No. 11 of 2001 within three months from today.

10. Petition allowed accordingly.

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